



Paper No. 10

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SEP 16 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of
Daum et al.
Application No. 09/747,442
Filed: December 26, 2000
Attorney Docket No. 9D-HR-19571

This is a decision on the "Petition for Withdrawal of Holding of Abandonment or, in the Alternative, for Revival of an Unintentionally Abandoned Patent Application," filed on February 4, 2002, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application and, alternatively, a petition under 37 CFR 1.137(b) to revive this application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The alternative petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on April 21, 2001 for failure to timely respond to the February 20, 2001 Notice to File Missing Parts of Nonprovisional Application ("2/20/01 Notice"), which provided an extendable 2-month reply period. No extension of time under 37 CFR 1.136(a) was obtained.

§1.181 petition

The petition requests withdrawal of the holding of abandonment on the basis that the 2/20/01 Notice was not received by General Electric Company ("GE").

A grantable petition to withdraw the holding of abandonment, alleging non-receipt of an Office action which is the cause of the abandonment, must overcome a strong presumption that the Office action at issue, duly addressed and indicated as mailed, was timely delivered to the addressee.¹

The showing required to overcome this presumption consists of:²

¹ 1156 OG 53 (Oct. 25, 1993).

² *Id.*

(1) a statement from the practitioner:

- stating that the Office action was not received by the practitioner;
- attesting, by referencing the docket record in (2) below, that a search of the relevant file jacket and docket records indicates that the Office action was not received; and

(2) a copy of the docket record where the allegedly non-received Office action would have been entered had it been received and docketed.

The 2/20/01 Notice was addressed to GE at the correspondence-address-of-record at that time: Appliance Park, 2-225, Louisville, KY 40225, and according to the PTO record was mailed to that address. If the file was subsequently transferred to GE's outside counsel, the fact that the 2/20/01 Notice is not presently in the transferred file does not establish that GE never received the 2/20/01 Notice; neither does it rule out the possibility that the 2/20/01 Notice had been received by GE but was never docketed.³ The §1.181 petition is thus dismissed and the holding of abandonment in this application will not be withdrawn. No petition fee is owed. The \$130 charged to Deposit Account No. 01-2384 has been reversed.

§1.137(b) petition

In reply to the 2/20/01 Notice, the petition encloses a signed "Declaration and Power of Attorney" and substitute drawings in compliance with the margins requirements of 37 CFR 1.84. Also included are: the \$1,280 petition fee, the \$130 surcharge for late filing of an acceptable declaration, and a statement that the entire delay in filing the missing items from the due date until the filing of a grantable §1.137(b) petition was unintentional. The §1.137(b) petition is thus granted.

The application is being returned to the Office of Initial Patent Examination for further processing, including issuance of a filing receipt if one has not yet been mailed. Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



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³ See MPEP section 711.03(c)(II) (Aug. 2001).